

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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M&S ADVISORY GROUP, INC., :  
 :  
Plaintiff, :  
vs. : Case No.C-1-02-522  
 : (Judge Spiegel)  
EYEMART EXPRESS, LTD., :  
 :  
Defendant. :  
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Videotape deposition of MARTIN SHERMAN,  
deponent herein, called by the Defendant for  
cross-examination, pursuant to the Federal Rules of  
Civil Procedure, taken before me, Lisa L.  
Weisenberger, a Registered Professional Reporter and  
Notary Public in and for the State of Ohio, at the  
offices of Dinsmore & Shohl, 1900 Chemed Center,  
255 East Fifth Street, Cincinnati, Ohio, on Monday,  
June 9, 2003, at 9:18 a.m.

ORIGINAL

1 homework. What kind of volume and what are your  
2 marketing" -- because in EyeMart's case, the  
3 marketing was very key.

4 So they would put together -- you know,  
5 what they would have to do is to see whether or not  
6 you could support that kind of location. If it  
7 does, then you go forward and make it happen. But  
8 it is not as simple as, "Give me one of those. Send  
9 it to me." Because, you know, it is just a little  
10 bit more scientific than that.

11 Q. Do you have any sort of system if you ask  
12 somebody to get you materials and they don't do it,  
13 what do you -- how do you follow up?

14 A. If they don't do it?

15 Q. Yeah.

16 A. Well, I will call them and say, "Geez, you  
17 didn't send me something. You were supposed to get  
18 in the mail." I mean, they --

19 Q. Do you have any kind of calendaring system  
20 that you use to do that?

21 A. To do what, sir?

22 Q. To do the follow-up.

23 A. No. The follow-up -- I would have a list  
24 on my desk which would say, "I am working on the

1 following things." Okay? "I called Jonathan at  
2 such and such a day, talked about a location. I was  
3 supposed to get a letter of intent, and I haven't  
4 gotten it, and now it is a week later." I am going  
5 to follow up on that.

6 Q. And did you have such a list for EyeMart?

7 A. I have a list for everybody like that.

8 Sure.

9 Q. And this is a list that you would create?

10 A. I would create it along with my client. I  
11 mean, I would create it because I am working on it  
12 day to day. I am sure that the client would have a  
13 follow-up list. The client would have a list and  
14 turn around and say, "Geez" -- I have gotten quite a  
15 few faxes from Jonathan, for example, saying, "Geez,  
16 Marty, where are we? We are waiting for the lease  
17 in Ft. Wayne." And I said, "Geez, you didn't get  
18 the lease?" Because they wouldn't send the lease to  
19 me. "Oh, you didn't get the lease?" I would turn  
20 around and do something to make sure we expedite  
21 that.

22 Q. Did you send Jonathan anything to confirm  
23 that you had followed up?

24 A. Yeah, some. Generally, I will either

1 write or call him by telephone. But most of what  
2 Jonathan would have gotten would be a -- if he is  
3 waiting for a document or what have you and say,  
4 "Jonathan, look for it. It was mailed today or  
5 tomorrow." If he doesn't, he would call me.

6 Q. And did you produce this EyeMart list to  
7 your attorneys?

8 A. What list are you talking about, sir?

9 Q. The list you said you would keep on your  
10 desk of what you were working on for EyeMart.

11 A. It would be a day-to-day thing. I mean,  
12 I'm not so sure other than -- geez, I have got  
13 tablets like that. That is my list. I mean, I  
14 don't have a sophisticated list. I have a list, a  
15 worksheet, that I work with every day of people that  
16 I know I have work in process.

17 Q. And what do you do with those work lists?

18 A. Well, I will pick it up when I get into  
19 the office, and I will turn around and say, Geez,  
20 this is Ft. Wayne, Indiana, Glenbrook Mall. We were  
21 supposed to get something. I spoke to Jonathan  
22 yesterday. Let me check and see where that is right  
23 now.

24 Q. Do you keep those lists?

1           A.     Yeah.   You will call -- yeah, I have got  
2     them all.   Do you want the -- they are all on  
3     tablets.

4           Q.     Where are they?

5           A.     In my office.

6           Q.     Okay.   So you didn't produce those to your  
7     lawyer?

8           A.     I don't think that is -- why would I  
9     produce those to my lawyer?

10          Q.     All right.   Well, we will want to see --

11          A.     You can have anything you want, sir.   My  
12     lawyer --

13          Q.     -- those lists.   Well, we do want to see  
14     some additional documents --

15          A.     That is fine.

16          Q.     -- if you have such lists.

17                 MS. JREISAT:   Just follow up with a  
18     request.

19                 THE WITNESS:   Of course.   Of course.

20                 Yeah.

21     BY MR. HAWKINS:

22                 Q.     Now, you said something that you would  
23     never see the lease yourself, that that would go  
24     directly to Jonathan?